An Independent Review into the Conditions for a Free and Fair Election in Pakistan on 8 February 2024

High Level Panel of International Politicians Hear Direct Evidence from those in Pakistan in relation to the current conditions and determine whether the conditions allow for a fair election to take place.

Introduction

1. This report considers whether the conditions exist for a free and fair election in Pakistan on 8 February 2024.

2. In order to undertake an objective process, the inquiry Secretariat[1] appointed barrister Michael Polak to chair and a panel of international Parliamentarians to consider the evidence in relation to this.

3. On 25 January 2024 the panel heard evidence from a range of witnesses based in Pakistan and abroad who spoke about their personal experiences in regard to the political processes in Pakistan and the conditions there.

The Panel

4. A panel of political leaders from around the world was assembled to consider the evidence that was given during the evidential hearing. The panel members were chosen for their objectivity, belief in democratic values, and their interest in international affairs

5. The panel consists of:
    a. Senator Paul Strauss: American politician and attorney serving as the senior United States Shadow Senator for the District of Columbia since 1997. He is a member of the Democratic Party with a deep interest in access to representation and human rights and has publicly advocated on behalf of the Uyghur people.
    b. Cătălin Dragoș Teniță: Romanian politician serving as a member of the Romanian Parliament, Chamber of Deputies since December 2020. Before December 2020 he was a digital entrepreneur and civic activist. He also has a keen interest in Freedom of Religion and Belief.
    c. Senator David Shoebridge: Australian Senator and former barrister. He is a member of the Australian Greens and was elected to the Senate at the 2022 federal election having served as a State Member of Parliament in NSW from 2010 to 2022. He has spoken out about various human rights abuses and in 2015, the Chinese consulate warned members of parliament to not attend Shoebridge's briefing on human rights

[1] The Secretariat comprise of Salman Shabbir, a civil and political rights activist based in Australia, who advocates for fair voting rights in Pakistan, Safina Nazir, a civil and human rights activist based in the UK, and Mahtab Aziz, a litigation and Human Rights Law solicitor specialising in complex civil litigation, commercial dispute resolution, and criminal law.

abuses in China's organ trade. In 2016, Shoebridge introduced a bill outlawing organ trade in New South Wales.

d. Mr Brandon Pillay: A South African politician from Chatsworth, KwaZulu-Natal. He is a Member of the National Assembly of South Africa representing the African National Congress. Prior to becoming a Member of Parliament, Mr Pillay was the chairperson of both the Bayview Flats Residents Association and the Bayview community policing forum.

Background to the Pakistani Democratic System

6. *'For just over half of its 64 years of independence, Pakistan has been ruled by its powerful military. Democratically elected governments have struggled to complete their terms, being alternately dismissed by presidents or removed from power by army chiefs…..only one parliament has ever completed its five-year term – and it was headed by General Pervez Musharraf, a military dictator, as both president and army chief*.' [2] Following partition in 1947, in 1956 Pakistan's first constitution came into force turning the country from an autonomous dominion into an "Islamic Republic".[3]

7. In 1969 amidst protests, President Ayub Khan resigned as president, handing over power to Army Chief General Yahya Khan, martial Law was proclaimed, and all assemblies were dissolved. This was then followed by a period of military rule.[4]

8. In 1972 martial law was lifted and Zulfikar Ali Bhutto was elected as President and a new constitution was enacted, declaring Pakistan a parliamentary democracy, with a prime minister as head of state.[5] However, in 1977, General Zia-ul-Haq removed Bhutto in a coup, suspended the constitution, and declaring martial law.[6] Bhutto was executed in 1979.[7]

9. In 1985, general elections were held (on a non-party basis) and martial law was lifted, and the newly elected national assembly ratified Zia's actions over the last eight years, and elected him President. Muhammad Khan Junejo is elected as prime minister.[8] However, just three years later, Zia dissolves parliament, dismissing Junejo's government, and he promises elections within 90 days, however, he is later killed, along with 31 others, in a plane crash.[9]

10. In 1988 general elections were held, with the Pakistan People's Party (PPP), led by Zulfikar Ali Bhutto's daughter, Benazir winning a majority of seats. Bhutto was sworn in as prime minister however only two years later President Ghulam Ishaq Khan dissolved the National Assembly, dismissing Bhutto's government on charges of alleged corruption and incompetence. Fresh elections were held, and Nawaz Sharif, groomed under Zia as the head of the Islami Jamhoori

[2] https://www.aljazeera.com/news/2013/4/30/pakistan-a-political-timeline
[3] Ibid
[4] Ibid
[5] Ibid
[6] Ibid
[7] Ibid
[8] Ibid
[9] https://www.aljazeera.com/news/2013/4/30/pakistan-a-political-timeline

Ittehad (IJI), was elected prime minister.[10]

11. In 1993 President Ghulam Ishaq Khan dismissed Sharif's government for alleged corruption and incompetence. He himself resigns later in the year. General elections were held, with Benazir Bhutto elected prime minister for her second term. Farooq Leghari, a member of the PPP, is elected as the country's president.[11] Three years later President Farooq Leghari dissolves the National Assembly, dismissing Benazir Bhutto's government.[12]

12. In 1997, general elections were held, and Nawaz Sharif's Pakistan Muslim League (Nawaz) (PML-N) wins in a landslide, and he is elected prime minister for the second time. Rafiq Tarar was sworn in as President the next year.[13]

13. In 1999, Nawaz Sharif attempted to replace General Pervez Musharraf, his army chief, however, Musharraf took power in a coup, placing Nawaz Sharif and other political leaders under house arrest.[14]

14. In 2001, General Pervez Musharraf assumes the office of president, while remaining chief of army staff. In 2022, Musharraf wins a referendum on his presidency, granting him five more years in the job. A general election is also held, with the Pakistan Muslim League (Quaid e Azam Group) (PML-Q) a party created by Musharraf and loyal to the president, winning most seats. The PML-Q's Zafarullah Khan Jamali is elected prime minister however he is replaced by Shaukat Aziz, then the finance minister, as prime minister of Pakistan.[15]

15. In 2007, President Musharraf dismissed the Chief Justice of the Supreme Court Iftikhar Muhammad Chaudhry, prompting a nationwide protest movement for his reinstatement. Chaudhry was eventually restored, but Musharraf imposed a state of emergency later in the year ahead of a key apex court ruling on the legality of his rule. The National Assembly, meanwhile, completed its five-year term for the first time in Pakistan's history. Benazir Bhutto, who returned to the country to campaign in the general elections after the passage of a controversial blanket corruption amnesty deal, is killed in a bomb attack in Rawalpindi.[16]

16. In 2008, general elections were held, with the PPP winning the majority of seats in the national assembly. Yousuf Raza Gilani is elected prime minister, with Asif Ali Zardari, Bhutto's widower and now co-chairman of the PPP, replacing Musharraf as president.[17] In 2009 the judges dismissed by Pervez Musharraf after his 2007 state of emergency were restored back to their positions.

17. In 2010, Pakistan's parliament passed the 18th amendment to the 1973 constitution, which, among other things, reversed some of the changes brought about by Musharraf and also

[10] Ibid
[11] Ibid
[12] Ibid
[13] Ibid
[14] Ibid
[15] Ibid
[16] Ibid
[17] Ibid

removed the President's power to dissolve parliament unilaterally under Article 58-2(b).[18]

18. In 2011 amidst scandals involving both corruption probes and the so-called "Memogate" affair, the PPP government came under increasing pressure from the opposition to hold early elections and in 2012 Prime Minister Yousuf Raza Gilani was deemed to be ineligible to hold public office having been found to have committed contempt of court. He was succeeded as PM by Raja Pervez Ashraf, another leading PPP member.

19. In 2013 the PPP-led coalition government became Pakistan's first democratically elected civilian-led government to complete its five-year term in office. A caretaker government was appointed, and a general election was set for May. The result of the 2013 elections was a hung Parliament with PLM-N receiving the most votes and winning the most seats but falling six seats short of a majority. However, following the elections, 19 independent MPs joined the PML-N, allowing it to form a government alone with Nawaz Sharif as new Prime Minister.[19]

20. In 2017, the Pakistan Supreme Court disqualified Nawaz Shariff from holding public office for life after he was convicted on corruption charges linked to 2016 Panama Papers revelations about his family's properties overseas. [20] Nawaz Shariff was sentenced to 10 years in prison and fined $10.6 million but was released on bail after serving less than 12 months[21] and left for medical treatment in the United Kingdom.

21. At the 2018 election the Pakistan Tehreek-e-Insaf (PTI) a party lead by Imran Khan won with a total of 116 of the 270 seats contested and Imran Khan was elected as Prime Minister. [22] However, on 8 March 2022 opposition parties submitted a motion of no confidence against Khan to the National Assembly's secretariat[23] and on 3 April 2022, President Arif Alvi dissolved the National Assembly of Pakistan on Khan's advice, after the Deputy Speaker of the National Assembly rejected and set-aside the motion of no confidence which should have required elections to the National Assembly to be held within 90 days. [24]

22. On 8 January 2024, Pakistan's Supreme Court scrapped lifetime bans on contesting elections for people with criminal convictions, paving the way for Nawaz Sharif to run for prime minister for a fourth time.[25]

[18] Ibid
[19] https://economictimes.indiatimes.com/news/politics-and-nation/nawaz-sharifs-pml-n-emerges-as-single-largest-party-in-pakistan-polls/articleshow/20051990.cms
[20] https://www.icij.org/investigations/panama-papers/former-pakistan-pm-sharif-sentenced-to-10-years-over-panama-papers/
[21] https://www.bbc.com/news/world-asia-50462154
[22] https://www.indiatoday.in/pti-feed/story/imran-s-pti-single-largest-party-with-116-seats-in-pak-polls-official-results-1299013-2018-07-28
[23] https://www.reuters.com/world/asia-pacific/pakistani-opposition-rallies-press-pm-khan-resign-2022-03-08/
[24] https://www.ndtv.com/world-news/pakistan-president-arif-alvi-dissolves-national-assembly-at-pm-shehbaz-sharifs-advice-4284804
[25] https://www.reuters.com/world/asia-pacific/pakistan-court-scraps-lifetime-election-bans-convicts-2024-01-08/

23. Imran Khan's nomination to stand for election to President from prison where he is detained, has been refused.[26]

Pakistani Electoral System

24. The 1985 constitution of the Islamic Republic of Pakistan provides for a federal parliamentary system which is democratic and Islamic, with a president as head of state and a prime minister as head of government. Under the present constitution, the president (who must be a Muslim) is elected for a five-year term by an electoral college consisting of the members of both houses of parliament (the National Assembly and the Senate) and of the four provincial assemblies. The president cannot be elected for more than two consecutive terms.[27]

25. The bicameral federal legislature consists of the National Assembly, with five-year terms, and the Senate. From 2002 the National Assembly has 342 members, comprising 272 members directly elected by adult suffrage, plus 60 women and ten representatives of minorities (non-Muslims). These seats reserved for women and minorities' representatives are allocated proportionally to all parties gaining more than 5% of the directly elected seats.[28]

26. The Senate is a permanent legislative body with 100 members (previously 87) elected for six years with about half of them retiring every three years. Each of the four provinces elects 22 senators, including four women and four technocrats; the remaining 12 are elected from the Federal Capital Territory and the tribal areas.[29]

27. Legal constitutional change require the support of two-thirds of the total membership of the National Assembly and the Senate.[30]

28. Executive power is vested in the prime minister and the federal cabinet. The prime minister, generally the leader of the party or coalition with the greatest number of seats, is selected by a vote of the National Assembly. The president appoints the federal cabinet upon the advice of the prime minister.[31]

29. Pakistan's four provinces enjoy considerable autonomy. Each has a governor, a Council of Ministers and a provincial assembly whose members are elected by universal adult suffrage. There are reserved seats for minorities.[32]

Evidence Heard

[26] https://www.reuters.com/world/asia-pacific/pakistan-election-body-rejects-ex-pm-imran-khans-nomination-2024-elections-2023-12-30/
[27] https://www.commonwealthofnations.org/sectors-pakistan/government/
[28] Ibid
[29] Ibid
[30] Ibid
[31] Ibid
[32] Ibid

30. On 25 January 2024, the panel heard evidence from a number of witnesses in regard to the conditions in Pakistan. These included political candidates, journalists, the children of politicians who are being detained, and experts in relation to the human rights situation in Pakistan.

31. The first witness who gave evidence to the panel was **Aima Wahid**, Crisis Response Casework and Campaign support lead at Amnesty International Australia, she gave background evidence in relation to the current conditions within Pakistan for a free and fair election[33], specifically she spoke about arbitrary detentions, the restriction of protests, the targeting of journalists, the harassment and torture of public officer holders, conditions being put in place by the authorities that were forcing women to quit politics, and the killing of the journalist Arshad Shariff in Kenya. She also discussed the banning of the symbol of the PTI, a cricket bat, which would damage their election hopes as it is used to identify their party by those who cannot read (estimated to be approximately 56% of the population), and the arbitrary detention of political opponents of the current government.

32. Ms Wahid's evidence included the following key passages:
    a. *It is crucial that we shine a light as we say at Amnesty on the various issues that are plaguing Pakistan as we speak especially when the country is going for elections in a few days' time. These issues included forced disappearance, the suppression of freedom of assembly and expression and the unjust arrests of politicians and journalists as well as the rampant use of torture and other ill treatment including detention, use of illegal arrests, unfair to no trials of those detained. One of the most disturbing aspects of Pakistan's human rights crisis is the widespread practice of enforced disappearances. Individuals, students, professional, activists, journalists and human rights defenders critical of the government are arbitrarily detained by state authorities or unidentified armed groups and these victims are then held in secret locations without any legal process leaving families in anguish as they are left with little or no information regarding the whereabouts of their families. This lack of accountability and transparency in these cases has raised serious concerns about the rule of law and the protection of citizens fundamental rights. International organisations including Amnesty International have repeatedly called on the Pakistani government to address this issue and ensure the safe recovery of those who have disappeared;*
    b. *According to the commission of enquiry on enforce disappearances, as of 31st October 2022, at least 2200 cases remained unresolved. Since 2023 this figure has significantly increased, and Amnesty has extensively recorded this at various reports and figures for 2023 are soon to be published.*
    c. *Pakistani citizens are facing severe restrictions on their freedom of assembly and expression. Peaceful protests and public gatherings are often met with excessive force by law enforcement agencies suppressing the right to descent and voice grievances. Journalists reporting on sensitive issues or criticising the government have faced intimidation, harassment and physical attacks. The atmosphere of fear created by these restrictions stifles the democratic discourse and undermines the principles of free speech. More recently there have been reports where the government has*

[33] Aima Wahid Transcript of Evidence

restricted and, in some areas, forbidden political rallies, protests or gatherings before the upcoming elections.

d. *Equally concerning is the increasing trend of arrests targeting politicians and journalists. Political leaders critical of the government find themselves behind bars on dubious charges undermining the democratic principles. We all saw the horrific scenes unfold last year in May and onwards where public office holders, political party members and their families were harassed and tortured in many ways including illegal break-ins into homes, arresting family members and relatives. As a result, many politicians, mainly women, have been forced to quit politics from Pakistan TQ and PTI and others have had to give statements under duress. It is important to note that most of these have been forced to leave politics due to risk to their life or their family.*

e. *Media workers have reported increased censoring and arrests of journalists. Journalists who we all know and appreciate are the watchdogs of society are being silenced through harassment, threats and detention further restricting the flow of information and the public's right to knowledge. Notable mentions but not restricted is of journalist Imran Ryazan. Police arrested the journalist on sedition related charges relating to his criticism of the military. Unidentified men attacked Azaz Amir, a senior analyst with a private news channel because of his criticism of alleged criticism of Imran Khan and the military during a seminar. Arshad Sharif, a journalist and a well-known supporter of Imran Khan was killed in Kenya where he had allegedly taken refuge after facing threats in Pakistan.*

f. *The use of torture and other ill treatment has remained routine. On 9th August, Shabas Gil, a senior PTI politician was arrested in Islamabad after publicly criticising the military. He was released on bail. Shabas Gil and PTI officials alleged that he was tortured whilst in detention although medical reports and government officials have refuted this. Senator Azam Khan Sawati was arrested by FEI and charged with sedition after tweeting criticism of the Chief of the Military. He told reporters that he was stripped and tortured, particularly on his body. He was released on bail before being rearrested in November for the same tweets. His family have been harassed.*

g. *Lastly, former Prime Minister Imran Khan's election symbol has not been allowed to be used for upcoming elections in a country where the vast majority of people have limited or low literacy levels. Election symbolism is essential for citizens to express their right and choice for collectibles. Denying an established party to contest elections is a violation on many fronts. Given such conditions there are serious concerns about the freedom and fairness of elections in Pakistan.*

33. The next witness was **Kanwal Shauzab**, a former member of the National Assembly, former Parliamentary Secretary for the Ministry of Planning Development, and Special Initiatives and also the President of the Woman's Wing in PTI. She stated that as an opposition politician she has suffered violence including severe beatings by the authorities, she has been arrested on fake political cases and her family members have been arrested, she has been threated with rape, party workers have been targeted, that there was intimidation aimed at discouraging women from political participation, and that she has been in hiding for 9 months.[34] She also explained how the persecution extended beyond the individual politicians as husbands of politicians have lost their jobs and children cannot go to school. For these reasons she states

[34] Kanwal Shauzab Transcript of Evidence

that the opposition political campaign has faced significant obstacles.

34. Mrs Shauzab also stated that nomination papers were being refused and that she had been prevented from campaigning in the election.

35. Mrs Shauzab's evidence included the following key passages:
    a. *In recent times we have witnessed a concerning trend in Pakistan, disproportionate and targeted crack down on women in politics and I am one of the victims. I just have suffered this raid 15 minutes before this meeting so I am pretty much disturbed because my mother is badly abused by 30 policemen 20 minutes back, so past May 9th, violence was initiated to depoliticize women. Targeted persecution and victimisation based on political affiliation was inflicted upon political women leaders and workers which included spear beating and I am also one of the victims who received it. Illegal arrest without following the rule of law. Custodial torture, denial of bail and re-arrest based on fake political cases. This Punjab police conducted unwarranted raids, arresting family members including underage kids. The targeted party workers who they could not find, the police contributed to fear factors and intimidation within the political landscape.*
    b. *I sustained severe injuries after being badly beaten and tortured by male police during a peaceful protest on 9th May at Dealk Islamabad. My election campaign in Pakistan is facing significant obstacles. After I filed my nomination papers I had to encounter severe disruptions during the scrutiny phase. The venue for the returning office was heavily guarded by police and all my proposals and seconders, either they were abducted or they were badly tortured, their houses were broken one night before my scrutiny and you cannot believe that the RO Office was in the court premises and all my proposers and seconders were lawyers and despite the fact that they were lawyers they were not allowed to enter the premises of court for my scrutiny, so later I had to go to court and I had to spend a lot of money to get my papers accepted by the court.*
    c. *30 minutes before this meeting has started 30 men, 30 Punjab police men have raided my house. My mother was there with my family and my friends who are the ladies who are doing my campaign because I am not allowed to run my campaign so they abused my mother and these women and for the last two days I am in my constituency but I am not allowed to go back home and they have taken pictures of my car and circulated it to all the police stations and the pickets. There are so many pickets at the exit and entry of all of the entire city so I cannot go out. They are searching for me and my attachment to PTI is my only crime.*

36. The next witness to give evidence was **Imbisat Hamza Malik** the daughter of detained politician Alya Malik. She gave evidence that her mother has been detained for the past 9 months after her dramatic arrest in front of her family when the Police tore the door down, barged into the family home, and dragged her mother out of the house. Her mother was then detained in solitary confinement despite note committing any crime or being a risk to anyone.[35]

37. Key passages from Imbisat's evidence were:

[35] Imbisat Hamza Malik Transcript of Evidence

a. they detained my mother for 3 days in a death cell which is a form of solitary confinement so she was barely given any sort of food and the food she was given was really, really bad and then she was detained under the MP Order which is basically for people who go to protests and then she was detained under a case that was extremely frivolous and we believed it holds no value and if the rule of law would be followed it would be dismissed in a matter of minutes but yet she has been detained; *and*
b. *the judicial process itself has been delayed to the extent that we do not know if the courts can give any sort of relief to us because the courts are essentially against us and we do not know when any of this will end and how we should proceed, who we should turn to for help because we obviously have lawyers but they can't do much when the law is essentially pitted against you, when judges refuse to listen to the case, when they don't attend hearings that they set or sometimes they don't even set hearings and don't even listen to the case so she's been detained for practically doing nothing, for exercising her democratic right to protest and then she's detained for the last 9 months.*

38. The next witness to give evidence was **Zartaj Gul**, former Minister of State for Climate Change. She gave evidence in relation to filing for nomination papers but at first not being given them, the harassment of her lawyer who went there to file the papers, that she had been subjected to unfounded legal charges, and that she had been prevented from going to her constituency to campaign for the last 9 months.[36]

39. Key passages from Ms Gul's evidence were:
    a. *My journey to the assembly as a young female politician was a testament to the people's support for a change. However, post regime events have cast a dark shadow on our democratic process. I am a victim of political persecution targeted for my unwavering loyalty to my leader and my party's ideals. Our recognised symbol as a beacon of democratic struggle for 26 years one unjustly revoked and replaced with hundreds of symbols on the ballot paper allocated to the party candidates including mine as a bench creating a labyrinth of confusion for voters and a valiant attempt to diminish our party's identity and influence in a single closure of our businesses, separation from my family and forced displacement and unjust legal accusation; and*
    b. *My efforts to campaign have been thwarted at every turn from filing for my nomination papers to my work dedicated to a democratic door to door campaign have been arrested and intimidated instilling fear and silence in those who stand with me. This is not the environment conducive to the free expression of the will of the electors as required by the ICCPR and the IPU guidelines*.

40. The next witness to give evidence was **Azam Swati**. He is a notable Pakistani politician, having previously served as a Senator and a senior vice president in the Pakistan Tehreek-e-Insaf (PTI) party. He has held multiple key portfolios/ministries. Before his political career in Pakistan, Swati was a successful businessman and lawyer in the United States of America.

[36] Zartaj Gul Transcript of Evidence

41. He gave evidence that his house was raided by 50 people, he was beaten in front of his family including his grandchildren, that he would take this trauma to his grave, that he was stripped and held for around 20 days, that he had made a speech asking the head of the army whether he had fraudulently received billions of rupees, he had 54 cases registered against him, that the election register rejected his paper as he is underground and cannot go out, and that his family has been targeted and they have had to leave Pakistan. [37]

42. Key passages from Mr Swati's evidence were:
    a. *It started on 12th October 2022 when Shabah Sharif got released from all the corruption cases and I made a tweet asking then Army Chief Bajwa is it that corruption in Pakistan has been legitimised? That night a ranking sitting Senator highly qualified in the age of 76, my house was raided by 40-50 people with no warrant whatsoever. I was tortured and beaten before my grandchild, that is a trauma and my wife, that is a trauma. I think it will take me to the grave. I will never ever overcome that emotional moment. Then those several dressed people took me, they beaten me and given me such torture and made a movie and that video been shown to different people;*
    b. *I was stripped and then I was jailed for about 19 or 20 days after that date I got bail. Then again I made a speech on 26th November asking the Army Chief Bajwa that the head of army Chief in India has a wealth of only 26 Lakh Rupees where you have got billions of Rupees. I was again arrested, tortured, 54 cases were registered against me, seditions, terrorisms and so many others I think I am following just as many cases as Imran Khan he has 200 then I had maybe 5 or 6 dozen cases. I was taken all over Pakistan from one police station to the other to the other to the others eventually I got bail after 68 days or so and again after the 9th month that was a false flag operation;*
    c. *Nas Sharif is running. I was running against him. I filed my – today even I am a sitting Senator, if I am qualified to be a Senator in the upper house but I am not qualified to run against Nas Sharif so ARO rejected my paper. I went to tribunal. They rejected my paper. Because I am underground I cannot go outside. Then I went to a higher court and that higher court with their own wisdom, they got a larger bench and the larger bench even rejected my paper so I cannot run Nas Sharif otherwise with the grace of Almight because of Imran Khan vote I am so popular that I would have defeated that corrupt element of Pakistan; and*
    d. *In relation to whether the party could carry out public campaigning, he stated 'many jurisdictions and many constituencies we cannot even open an office rather than campaigning it. Very limited access to people who are basically running it just like you know I have done that on the 3rd of January, all members of PTI who were candidates and who is running at the present time other than me including myself being put on MPO – Maintenance of Public Order. They register several cases against me so if they come out they will be arrested and be gone forever.'*

43. The next witness to give evidence was **Falak Khan,** the sister of Sanam Javed Khan who has been in prison since 10 May 2023. They are not part of any political party but are activists

[37] Transcript of Evidence Azam Swati

against injustice in Pakistan.

44. She gave evidence that her sister was in illegal police custody as they were trying to force her to give false statements against Imran Khan, that her sister wanted to contest the election, but her papers were rejected, that the authorities were raiding houses without warrants, and that she was unable to return home because of this.[38]

45. Key passages from Ms Khan's evidence were:
    a. *My sister Sonam Javaid Khan is mother of two children and has been in illegal custody for the past 9 months. Her husband is also in police custody for the past 9 months. Her husband is also in police custody just to pressurise her to give a false statement against Imran Khan;*
    b. *My sister wanted to contest elections, but her nomination papers were rejected by the DROs because Mariam Nawas her opponent is afraid to face her in elections;*
    c. *My sister wanted to contest elections but her nomination papers were rejected by the DROs because Mariam Nawas her opponent is afraid to face her in elections. The first ever civil bureaucracy have been appointed as ROs and DROs and before they were appointed from the judiciary; and*
    d. *I have not been able to leave my house for the last 9 months because police still raid my house every second day. I have not met with my parents. I have no contact with my parents and because I am scared that they can hurt them, because of me they can victimise them, because of me my children are not attending school since 9 May because I fear that they can abduct them and they can force me to give false statement against Imran Khan. I have suffered mentally and financially. I have to change my house every month. My businesses have been shut down, one partially and one completely.*

46. The next witness to give evidence was **Khalid Khurshid** ex Chief Minister of Gilgit-Baltistan. He gave evidence that there was a peaceful sit in after the announcement of the election in Gilgit-Baltistan, that the region was left unrepresented, that locals cannot travel to the 'mainland' of Pakistan, that the refusal to allow the party to use their recognised symbol seriously disadvantaged them as many voters cannot read, that they have a separate assembly with no seats in the senate and national assembly, that the Police seized the assembly, and that members of the party were threatened in order to cause them to defect from the party.[39]

47. Key passages from Mr Khurshid's evidence included:
    a. *The campaign against the ex-Prime Minister Imran Khan and the Pakistan TQ intensified in Bistan after May 2023 despite our party's significant victory in the 2020 general election for the Bistan assembly. We faced unprecedented political challenges following my election as Chief Minister. Our government was systematically dismantled culminating in my disqualification on 4th July 2023 under dubious circumstances. What I am about to share reveals the alarming lengths to which the*

[38] Transcript of Evidence of Falak Khan
[39] Transcript of Evidence of Khalid Khurshid

system has gone to deny the Pakistanis their right to free elections and representations. This account is crucial in the context of the upcoming February 8th 2024 elections underscoring the need for vigilance to ensure such injustices are not repeated;

b. *In the by-election for my vacated seat in Bistan on September 9th 2023 despite facing numerous administrative challenges and tactics aimed at undermining our party the PTI candidate achieved a remarkable week demonstrating the strong support of the electorate. However, the response of the election commission to this clear mandate was deeply troubling under significant political pressure the commission unjustifiably delayed the announcement of the election result. This delay sparked the profound sense of injustice among the electorate. In response thousands of citizens engaged in a peaceful sit-in in front of the ARO office for 20 days and nights which led to him announcing the result. Following the announcement of the result in Gilgit-Baltistan by-election where the PTI candidate emerged victorious by a huge margin, the election commissioner of Gilgit Baltistan cited unsubstantiated complaints, withheld the official notification of the win and instead an inquiry was launched despite the first inquiry committee finding no irregularities;*

c. *the matter was taken to the Chief Court of Gilgit Baltistan. The Court issued a Stay Order preventing the election commission of Gilgit Baltistan from determining the outcome of the by-election. However, in a blatant defiance of the Court Order the election commission declared the by-election null and void undermining the democratic choices of thousands of voters who had supported the PTI candidate. As of now, no by-election has been scheduled leaving the constituency unrepresented in the Gilgit Baltistan assembly as Pakistan heads towards a general election; and*

d. *political parties in Gilgit Baltistan face unequal conditions while other political leaders of Pakistan Muslim League and Peoples Party, they can campaign freely. We the members of the PTI cannot travel to the mainland of Pakistan to campaign for our party for the upcoming general elections on 8th February. This level of political manipulation in Gilg Baltistan is unprecedented, disregarding the region's sensitivity to target PTI and its supporters for Imran Khan.*

48. The next witness to give evidence was **Dr Moeed Pirzada,** CEO & Editor of Global Village Space, TV Anchor, and a prominent Columnist & Blogger based in Washington, DC, USA. He gave evidence that he was forced to leave Pakistan because of threats, that his very close friend the journalist Arshad Shariff was assassinated in Kenya, that the media in Pakistan was targeted and is dysfunctional, that judges are being targeted, and that what was taking place in Pakistan was a fake exercise which could not even properly be called an election.[40]

49. Key passages from Dr Pirzada's evidence included:

a. *I was forced and compelled to leave Pakistan after repeated harassment by the military establishment agencies. A very close friend of mine, a colleague who I have worked with for a number of years, Arshad Sharif, was actually gunned down in Kenya;*

[40] Transcript of Evidence of Dr Moeed Pirzada

b. *Now the situation in Pakistan, there are several ways of looking at the situation. One of course is the oppression and the way the opposition is being persecuted, but also before I come to what is happening to the so-called fake elections, it is important to say that it is not just the opposition political party. Every aspect of Pakistani life in the past 22 months has been destabilised. Pakistani media has totally lost all of its capability to comment on Pakistani politics. Pakistani society, everything has been penetrated by Pakistani intelligence and the military. Pakistani judiciary has totally lost, is totally dysfunctional today. Just in the last 15 days the future Chief Justice of the Pakistani Supreme Court Justice Ul Hasan has been forced to resign. Before that another Judge, Justice Miah Ali Naki was forced to resign. Now we believe that Justice Munir Bakar and Aisha Malik are being targeted and the common thread and the connection between all these Justices of the Supreme Court is this, that two months ago all of them part of the five-member panel that had decided that the civilian political activist cannot be tried in the military courts so all the Judges are being targeted; and*

c. *The process that is being conducted in Pakistan cannot be described as an election. It is purely a managed selection exercise. For instance when you look at the electoral symbols of the main opposition party insofar which has according to conservative estimate more than 70% approval rating as long as you were looking toward the polling agencies you could have ignored them that the country's most credible English newspaper the Dawn published a survey which they had done a number of days to conduct a survey and they show that 67.3% of the people who will participate in the elections favour Imran Khan's party. This is just one of the statistics that can help you understand the situation. So, once you take away the electoral symbol of the political party the main political party, the party is actually not being, for all practical purposes the party has been banned. It is not participating in the election as a political entity or a political party, it has been fragmented into 750 individuals who all have their independent electoral symbols, and the public is finding it very difficult to identify whom they have to vote but not only this.*

50. The next witness to give evidence was **Shahzad Akbar**. He is a barrister and was an adviser to Prime Minister Imran Khan on interior and accountability. He held the status of Federal Minister and is a co-founder of the Foundation for Fundamental Rights an NGO focused on the fundamental rights enshrined in the Constitution of Pakistan

51. Shazhad gave evidence that he had left Pakistan to come to the United Kingdom, that from May 2023 there was a different pattern which included subduing political dissent, that the military was effectively ruling, that Imran Khan refused to do what the military demanded him to do and that then there was a new wave of terror unleashed on Pakistani citizens, that one political party is alleged to have masterminded the events of 9 May 2023 (removal of Imran Khan) although there has been no independent investigation as to what happened, and that there are allegations against people but not even a trial. He also stated that his house in Islamabad was razed, that his brother was kidnapped to try to force him to give evidence against Imran Khan, that a brave judge took on the military demanding them to reveal the whereabouts of his brother, that that Judge's own nephew was abducted as a result, that he

filed a complaint with the British Police that he was being blackmailed which started an interesting diplomatic incident, and that then eventually after 4 months, his brother was released but that during his brother's time in custody he was tortured.[41]

52. Key passages from Shahzad Akbar's evidence included:
    a. *I was one of the few individuals who were put on the no-fly list the night the government fell. I went to court, and I got my name out because there was nothing against me. I left the country. I came to the United Kingdom;*
    b. *what is actually happening in Pakistan, you have to see in perspective of two phases. One was the phase of regime change and when in Pakistan Imran Khan's government was changed and there was a pattern of what was happening in Pakistan and how it distinguishes from what is happening now is the May of 2023. May of 2023 there was a different pattern of subduing the political descent because there is no doubt in what really is in Pakistan is a hybrid rule and this hybrid rule the military is always ruling and political figures come and go and when they not serving the will of the military they are made to leave;*
    c. *The first attack on me, there was a demand from me from day one to become not only to leave Imran Khan and PTI but also to become a witness against Imran in several cases against him which I have been refusing but the serious demand and threat came in May 2023 when on 28th of May 2023 my house in Islamabad was raided where my children and my wife were living along with my brother and his family. My brother was taken he was then kept under their illegal custody. We brought habeas petitions before the Islamabad High Court. One particular brave Judge took on the military and summoned a serving General to produce my brother in court. That same evening, his own nephew was abducted and two days later the Judge recused himself from hearing the case so this was the level of things that were going on: and*
    d. *on 27th November I was attacked at my house when someone rang my doorbell and threw acid on my face. Luckily I was saved because immediately Security Services came then I was taken to hospital, there were some damages but they were not permanent and now that case is under investigation and the demands continue because three days after this attack the Pakistani authorities filed two more cases against me and one case where me and Imran Khan are both co-accused for which he is under trial and one thing that I think I forgot to mention the witnesses you heard today in legal language are either absconders or fugitives so I am one of those.*

53. The next witness to give evidence was **Fauzia Siddiqui.** She is a a candidate for the provincial assembly of Karachi. She gave evidence that she had been abducted, that she had witnessed a lot of harassment, and that party electoral workers were being arrested and that this was done to spread fear and panic.

54. Key passages from Fauzia Siddiqui's evidence included:
    a. *On the 9th of May I was forcibly abducted and later released by court order, but I found myself surrendering once more because my nephew had also been abducted. I was*

[41] Transcript of Evidence of Shahzad Akbar

detained in Sakur Jail under the Maintenance of Public Order for a period of 45 days. Since then, I have continued to take harassment and candidate Asalam Khalid was subjected to a grave attack. He sustained severe head injuries; and

b. *Additionally, I personally witnessed a lot of harassment and intimidation. We were warned to leave the area immediately with threats of facing the same fate of our candidates. After the incident we rushed Arsalan Khalil to the hospital. We organised a protest in Aisha Manzil near Muka Chalk like 90, the famous place in Karachi. The incident took place around 90 metres away from our campaign office which was adjacent to MKM office. It is important to note that during these attacks a police mobile and a rangers vehicle were stationed in front of our office. Despite being aware of the situation they did not intervene or take any action.*

55. The next witness to give evidence was **Javeria Siddique** who is a well-known journalist, and writer in Pakistan and her husband Arshad Sharif was a much-loved journalist in Pakistan who was assassinated in Kenya. She gave evidence about the murder of her husband, and the terrible conditions for journalists in Pakistan.[42]

56. Key passages of Javeria Siddique's evidence included:

a. *My name is Javeria Sadiq and I am a widow of a journalist and anchor Asad Sharif who was shot dead in Kenya in 2022. It has been one year and three months and still in his case there is no progress and the Supreme Court of Pakistan since last seven months.*

b. *candidates are allowed to do campaign but the people who are from PTI mostly are on the run or in hiding, especially the women are threatened by the quarters to not participate in the elections so even as a journalist it is very difficult for me to cover the elections because I am also facing censorship, harassment, and threats and if I told you about my other colleague Imran Ras was abducted for four months and now he is back and he is weak and struggling to get back to his normal life then my other colleague Wakas Sab Shakir they also abroad after all these threats, the same threats was given to Asad and the same threats were given to them so they left the country then Sami Ibrahim, Anam Shaikh and Jamil Faruki, they were arrested by the state;* and

c. *as a freelancer because I do work as a freelancer journalist, so we face the internet outrage on like weekly basis in Pakistan now and this is a basic human rights violation because they always suspend our internet services and social media sites so it is always difficult to submit our work on the time and the people who are against this regime and this government and this PDM and these all corrupt parties, they are facing layoff from the media and censorship and so we use now mostly like to give our opinion Youtube and Twitter and Facebook so what they do they always suspend the services of Youtube and Facebook and other social media sites where whenever the PTI is holding some kind of virtual meeting on the internet so this is also a very alarming thing that how are we going to cover the elections if we are deprived of internet on the day of election as well.*

[42] Transcript of Evidence Javeria Siddique

An Independent Review into the Conditions for a Free and Fair Election in Pakistan on 8 February 2024

International Legal Provisions on Free and Fair Elections

57. International standards for the functioning of electoral systems in democracies can be seen in international agreements, states' constitutions, and the case law of both domestic and supranational courts. Even where a provision is not directly applicable to Pakistan it is worth considering the contents of such requirement so as to understand whether the conditions in Pakistan accord with the general understanding of free and fair elections. Some provisions are as follows:

58. **International treaties**
    a. The The Inter Parliamentary Union (IPU) Declaration on Criteria for Free and Fair Elections

        1. *Free and Fair Elections*
        In any State the authority of the government can only derive from the will of the people as expressed in genuine, free and fair elections held at regular intervals on the basis of universal, equal and secret suffrage.

        2. *Voting and Elections Rights*

        (1) Every adult citizen has the right to vote in elections, on a non-discriminatory basis.

        (2) Every adult citizen has the right to access to an effective, impartial and non-discriminatory procedure for the registration of voters.

        (3) No eligible citizen shall be denied the right to vote or disqualified from registration as a voter, otherwise than in accordance with objectively verifiable criteria prescribed by law, and provided that such measures are consistent with the State's obligations under international law.

        (4) Every individual who is denied the right to vote or to be registered as a voter shall be entitled to appeal to a jurisdiction competent to review such decisions and to correct errors promptly and effectively.

        (5) Every voter has the right to equal and effective access to a polling station in order to exercise his or her right to vote.

        (6) Every voter is entitled to exercise his or her right equally with others and to have his or her vote accorded equivalent weight to that of others.

(7) The right to vote in secret is absolute and shall not be restricted in any manner whatsoever[43]*…*

3. Candidature, Party and Campaign Rights and Responsibilities

(1) Everyone has the right to take part in the government of their country and shall have an equal opportunity to become a candidate for election. The criteria for participation in government shall be determined in accordance with national constitutions and laws and shall not be inconsistent with the State's international obligations.

(2) Everyone has the right to join, or together with others to establish, a political party or organization for the purpose of competing in an election.

(3) Everyone individually and together with others has the right:

- *To express political opinions without interference;*
- *To seek, receive and impart information and to make an informed choice;*
- *To move freely within the country in order to campaign for election;*
- *To campaign on an equal basis with other political parties, including the party forming the existing government.*

(4) Every candidate for election and every political party shall have an equal opportunity of access to the media, particularly the mass communications media, in order to put forward their political views.

(5) The right of candidates to security with respect to their lives and property shall be recognized and protected.

(6) Every individual and every political party has the right to the protection of the law and to a remedy for violation of political and electoral rights.

(7) The above rights may only be subject to such restrictions of an exceptional nature which are in accordance with law and reasonably necessary in a democratic society in the interests of national security or public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others and provided they are consistent with States' obligations under international law. Permissible restrictions on candidature, the creation and activity of political parties and campaign rights shall not be applied so as to violate the principle of non-discrimination on grounds of race,

[43] https://www.ipu.org/impact/democracy-and-strong-parliaments/ipu-standards/declaration-criteria-free-and-fair-elections

colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

(8) Every individual or political party whose candidature, party or campaign rights are denied or restricted shall be entitled to appeal to a jurisdiction competent to review such decisions and to correct errors promptly and effectively.

(9) Candidature, party and campaign rights carry responsibilities to the community. In particular, no candidate or political party shall engage in violence.

(10) Every candidate and political party competing in an election shall respect the rights and freedoms of others.

(11) Every candidate and political party competing in an election shall accept the outcome of a free and fair election.

59. **UN Declaration of Human Rights ("UDHR") (1948)** – The UDHR is a non-binding General Assembly resolution which has acquired foundational importance as an expression of the fundamental principles of human rights in international law.[44]

Article 21: "*The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures*."

Article 19: "*Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."*

Article 20: *"(1) Everyone has the right to freedom of peaceful assembly and association. (2) No one may be compelled to belong to an association*."

a. **The International Covenant on Civil and Political Rights (ICESCR)**

Article 25: "*Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:*
(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

[44] It is argued by some that the UDHR has acquired the status of customary international law. See: Thomas M. Franck, *The Emerging Right to Democratic Governance,* 86 Amer. J. Int'l L. 46, 61

(c) To have access, on general terms of equality, to public service in his country."

This provision is supplemented by the protection of certain fundamental human rights such as freedoms of thought (Article 18), expression (Article 19(2)), and association (Article 22) which are essential to a free and fair election.

Pakistan ratified the ICCPR with a reservation allowing for the Constitution to require both the President and Prime Minister to be Muslims on 23 June 2010. [45]

b. **International Covenant on Economic, Social and Cultural Rights**
Article 1: "*All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development*."

Commentators have submitted that the right to self-determination requires free, fair and open participation in the democratic process of governance.[46]

Pakistan ratified the ICESCR with a reservation only to use resources available to meet the objectives of the treaty on 17 April 2008.[47]

c. **The African Charter on Human and People's Rights**
(i) Article 13: "*Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law*."
(ii) The African Charter also guarantees certain rights which constitute necessary components for a free and fair election, including: freedoms of association (Article 10) and assembly (Article 11).

d. **The American Convention on Human Rights** (which established the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights) Article 23:
i. *"Every citizen shall enjoy the following rights and opportunities: a. to take part in the conduct of public affairs, directly or through freely chosen representatives; b. to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and c. to have access, under general conditions of equality, to the public service of his country.*
ii. *The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings."*

e. **The American Declaration of the Rights and Duties of Man**

[45] http://www.bayefsky.com/html/pakistan_t2_ccpr.php
[46] Thomas M. Franck, *The Emerging Right to Democratic Governance,* 86 Amer. J. Int'l L. 46, 52
[47] http://www.bayefsky.com/html/pakistan_t2_cescr.php

(i) Article XX: "*Every person having legal capacity is entitled to participate in the government of his country, directly or through his representatives, and to take part in popular elections, which shall be by secret ballot, and shall be honest, periodic and free*."

f. **Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms**

Article 3: "*The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."*

60. **Jurisprudence:**

a. The ECtHR has emphasised in *Orlovskaya Iskra v Russia* App no 42911/08 (ECtHR, 21 February 2017, [110]) that the right to free elections is "crucial to establishing and maintaining the foundations of an effective and meaningful democracy governed by the rule of law."

b. In relation to the Right to vote the jurisprudence of the European Court of Human Rights (ECtHR) on the right has established that restrictions on the right to vote because of national origin may breach Article 4 of Protocol No. 1 of the Convention. Whereas States enjoy a margin of appreciation in legislating on parliamentary elections, rules must be justified on reasonable and objective grounds. (*Aziz v. Cyprus*, 22 June 2004). For example, the ECtHR has held that a blanket ban on the right to vote affecting all persons under protection regardless of their actual mental faculties constituted a violation of Article 3 of Protocol No.1. (*Alajos Kiss v. Hungary*, 20 May 2010)

c. In relation to eligibility to stand for election, the ECtHR has sought to balance the right of States to establish formal conditions of eligibility to stand for elections and the application of such statutory conditions on objective grounds. For instance, in *Podkolzina v. Latvia* (9 April 2002), the ECtHR observed that since the applicant had been issued with a valid certificate of linguistic competence (whose validity had not been called into question by the Latvian authorities), the decision of the State to strike the applicant's name off the list of candidates was devoid of any objective ground.

d. In relation to the treatment of voting irregularities, In a number of cases, the ECtHR has examined the conduct and decisions of electoral commissions. In *Kovach* v. *Ukraine* (7 February 2008), the ECtHR held that the decision by an Electoral Commission to annul the vote in four electoral divisions had to be considered as arbitrary and not proportionate to any legitimate aim pleaded by the Government. In *Namat Aliyev v. Azerbaijan* (8 April 2010), the ECtHR considered that the applicant's right to stand as candidate in free elections had been breached by the electoral commission's conduct which revealed a lack of any genuine concern for the protection of the applicant's right to stand for election.

e. In relation to media coverage of elections, the Court has demonstrated concern with ensuring that there is equality in TV coverage of the electoral campaign to ensure that elections are free.

f. In relation to the Organisation of American States; Inter-American Court of Human Rights (IACHR), the preamble of the Charter of the Organization of American States provides that "*representative democracy is an indispensable condition for the*

stability, peace and development of the region." In *Yatama v. Nicaragua*, the IACHR held that the right to vote in democratic elections constitutes one of various forms of political participation.[48] It is worth noting that this decision quotes from the Human Rights Committee's finding that the right to vote is a right of individuals to take part in those processes that constitute the conduct of public affairs and entail a right to have one's vote counted.[49] In this respect, the right to vote is a political right made viable by ensuring freedom of expression, assembly and association.[50]

g. In the African Court of Human and Peoples' Rights in *Houngue Éric Noudehouenou v. Republic of Benin*, App. No. 003/2020 HEN, Ruling*, Provisional Measures – 2* (Afr. Ct. Hum. Peoples' Rts. Sept. 25, 2020), the applicant's complaint concerned a a series of amendments to the 1990 Constitution of the Republic of Benin (Benin), Law No. 2019-40 (Revised Constitution), and changes to Benin's electoral law (para. 1). It was alleged that these had the cumulative effect of violating Houngue's right to stand for election in the upcoming 2021 presidential election as an independent candidate, as well as his right to freedom of expression and freedom of association. The Court found that Benin violated its obligation under Article 10(2) of the African Charter on Democracy, Election and Good Governance (ACDEG) because Benin's constitutional amendment process was not based on national consensus (para. 119). Notably, "*[t]he fact that the Revised Constitution was passed unanimously cannot conceal the need for national consensus driven by the 'ideals that prevailed during the adoption of the Constitution of 11 December 1990' and . . . the ACDEG*."[51] The Court ordered Benin to "*take all necessary measures to ensure cessation of all effects of the constitutional revision and the violations which the court found*."[52]

Conclusion

61. The evidence that the panel has heard raises serious concerns about the upcoming election on 8 February 2024 and as to whether the result of the election will be the *'will of the people as expressed in genuine, free and fair elections'* as required by the IPU Declaration.

62. Given that '*the right to vote is a political right made viable by ensuring freedom of expression, assembly and association'* the panel also finds it worrying that these important complementing rights appear to have been breached in Pakistan in the lead up to the election.

63. In coming to this conclusion, the panel has taken into account the clear and cogent evidence presented during the evidential hearing, including from objective reputable organisations, concerning various actions by the authorities which impinge upon the freedom and fairness

[48] I/A Court H R, Case of Yátama v Nicaragua (I/A Court H R Series C No 187, Judgment 23 June 2005) [196].
[49] Ibid., [173]

[50] UN Human Rights Committee, 'General Comment 25 Article 25: The right to participate in public affairs, voting rights and the right of equal access to public service' (1996) CCPR/C/21/Rev.1/Add.7 (General Comments 25) [6]-[8].

[51] *Houngue Éric Noudehouenou v. Republic of Benin*, App. No. 003/2020 HEN, Ruling, Provisional Measures – 2 (Afr. Ct. Hum. Peoples' Rts. Sept. 25, 2020), [65]
[52] Ibid., [123(xv)]

of the election by restricting both specific voting rights as well as the related political and civil rights required for an election to have meaning as the will of the people.

64. The panel is particularly concerned to hear strong evidence in relation to barriers being erected as to the registration of candidates with some candidates having to use the courts simply to be registered as candidates for the election and others being barred from running altogether.

65. These barriers reduce their resources and the time available for them to campaign for election and the unjustifiable actions to restrict the registration of opposition candidates is likely to have discouraged many candidates from contesting the election.

66. Further, the panel has heard evidence about the physical targeting of opposition candidates and their families. This has included numerous enforced disappearances and arbitrary detentions, and physical assaults and torture, both by the State and private actors, without any meaningful action taken by the authorities to prevent or punish the perpetrators. The panel particularly notes the tactic of seizing family members of potential opponents to force them to return to the authorities to be persecuted themselves. Especially concerning to the panel is that these attacks, including threats of sexual violence, appear to be disproportionately aimed at female candidates.

67. The panel notes the evidence that, not only are members of the opposition being targeted in this way, but that Pakistan's '*widespread practice of enforced disappearances'* whereby people are '*arbitrarily detained by state authorities or unidentified armed groups and these victims are then held in secret locations without any legal process'* is also visited upon other '*individuals, students, professional, activists, journalists and human rights defenders who are critical of the Government*'. The use of these tactics against a wide range of people, including those who usually play a critical role in protecting the rights of others, is a further attack on the conditions needed for a free and fair election to take place as it severely restricts the sharing of information and creates an atmosphere of fear.

68. The panel notes that the witnesses' evidence appeared to indicate that even where an ostensibly legitimate legal process takes place against a political candidate or politically engaged individual, there was evidence from witnesses that this was in effect targeted harassment of that person, rather than a genuine criminal process aimed at the proper punishment of criminal offences. The panel noted the evidence of Azam Swati who reported having 54 cases registered against himself and stated that he was taken all over Pakistan from one Police Station to another and that he was only granted bail after 68 days detention. The panel also noted the evidence from Aima Wahid of Amnesty International about the widespread unjust arrests of opposition politicians. This raises concerns for the panel about potential misuses of the legal system for political purposes.

69. In a similar vein, a further concern of the panel, after hearing the evidence of Khalid Khurshid ex Chief Minister of Gilgit-Baltistan, was that it appears that even when the Courts previously made rulings in favour of the election of opposition candidates at past elections, such as the

one in his territory, these decisions were not effected by the bodies with the responsibility to do so.

70. The panel also heard about the recent judicial disqualifications and forced resignations which are evidence of pressure being placed upon the judiciary to rule in favour of the Government on important political matters and in relation to matters of fundamental rights including political kidnapping cases or the right of individual to be tried in civilian courts rather than before military tribunals.

71. In relation to the associated political and civil rights required for a free and fair election to take place, the panel is particularly troubled by the targeting of journalists including the high profile assassination of Arshad Shariff in Kenya, the suspension of international services and access to social media sites which seeks to prevent journalists from providing contrasting news and opinions, and the general atmosphere of violence which is not conducive to the important work of journalists.

72. Related to this restriction of the right to give and receive information is the severe restrictions on the right to assemble and protest which have been taking place. This limits the ability of opposition candidates to inform voters of their political beliefs and is a serious concern in the run up to the election.

73. The panel has also heard about the restriction of the use of the symbol of an opposition political party leaving that party with no identifiable mark, the importance of which cannot be underestimate given the large number of illiterate voters who use the symbol to recognise their preferred candidates. This could place that party at a distinct disadvantage, and it might give the appearance seen as affecting the fairness of the election *vis a vis* those parties who have been allowed to use their recognised symbols.

74. For the reasons set out above, based upon the evidence we have heard, and taking into account the legal provisions included within this report, unfortunately we are unable to find that the conditions for a free and fair election on 8 February 2024 are in place in Pakistan.

Michael Polak (Chair of Review)

US Senator Paul Strauss (District of Columbia/Shadow)

An Independent Review into the Conditions for a Free and Fair Election in Pakistan on 8 February 2024

Senator Shoebridge (Australia)

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